Steelcase, Inc. *and* International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO. Cases 7–CA–35978 and 7–CA–36054

March 31, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS AND TRUESDALE

On December 29, 1994, Administrative Law Judge Richard A. Scully issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief, and has decided to affirm the judge's rulings, findings,[1] and conclusions[2] and to adopt the recommended Order.

The Respondent excepted to the recommended Order to the extent that it requires posting of the Board's notice to employees at all three of its Kentwood, Michigan facilities, rather than just at the two facilities at which the unfair labor practices occurred. We interpret the order as the Respondent does, but we find no merit to the exception.

The Respondent's facilities consist of three adjoining plants, and the union organizing campaign that was the backdrop for the unfair labor practices involved in this proceeding encompassed all three facilities. Additionally, the January 10, 1994 memorandum from Human Resources Director Dan Wiljanen to Hosea Haralson and Robert Van Noller (two computer furniture plant employees who were principally involved in this case in posting and disseminating union literature) plainly states that the Respondent's ''rule'' is that it ''does not prohibit employees from going into non-work areas in a Steelcase plant (other than the one where they work), outside their working hours, to post materials in appropriate locations.'' Further, acting panel plant superintendent, Rich Doorn, who told Haralson and Van Noller to leave the plant and refused to look at a copy of the January 10 memo they produced, called the plant Employee Relations Manager George Nelson's office to determine if he acted improperly in turning the two employees away, and Nelson's secretary confirmed that the policy was that employees were not permitted in plants in which they did not work. In view of the foregoing, we agree with the judge that the violations found herein indicate that the Respondent failed to take the action necessary to assure that supervisors were aware of and respected the employees' rights to which the memorandum ''pays lip service,'' and we find that the order reasonably requires the posting of the notice to employees in all three plants. In so finding, we note that *Control Services*, 314 NLRB 421 (1994), and *Kinder-Care Learning Centers*, 284 NLRB 509 (1987), on which the Respondent relies are distinguishable in that they involved multiple facilities of the employers that were geographically separate from one another, and the unfair labor practices occurred at only one of the geographically distinct facilities.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Steelcase, Inc., Kentwood, Michigan, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Thomas W. Doerr, Esq., for the General Counsel.
William Fallon, Esq., of Grand Rapids, Michigan, for the Respondent.

DECISION

STATEMENT OF THE CASE

RICHARD A. SCULLY, Administrative Law Judge. Upon charges filed on May 23, 1994, by Robert Van Noller and on June 13, 1994, by International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW), AFL–CIO (the Union), on July 5, 1994, the Regional Director for Region 7 of the National Labor Relations Board (the Board), issued a consolidated complaint alleging that Steelcase, Inc. (the Respondent) committed certain violations of Section 8(a)(1) of the National Labor Relations Act (the Act). The Respondent filed a timely answer denying that it has committed any violation of the Act.

A hearing was held in Grand Rapids, Michigan, on October 12, 1994, at which all parties were given a full opportunity to participate, to examine and cross-examine witnesses, and to present other evidence and argument. Briefs submitted on behalf of the General Counsel and the Respondent have been given due consideration. Upon the entire record and from my observation of the demeanor of the witnesses, I make the following

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

At all times material, the Respondent was a corporation with an office and places of business in Kentwood, Michigan, where it engaged in the manufacture, nonretail sale, and distribution of office furnishings and related products.

[1] Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we affirm the judge's finding that Supervisor Baar's removing union newsletters from breakroom tables in the panel plant did not violate Sec. 8(a)(1) of the Act.

During the calendar year ending December 31, 1994, the Respondent, in the conduct of its business operations, sold and shipped from its Kentwood, Michigan facilities goods valued in excess of $50,000 directly to points outside the State of Michigan. The Respondent admits, and I find, that at all times material it has been an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that at all times material the Union was a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

A. *Background*

The Respondent conducts operations in three adjoining facilities in Kentwood, Michigan, known as the computer furniture, panel, and context plants. In the fall of 1993, the Union began a campaign to organize the employees of the three plants. Throughout each of the plants there are a number of bulletin boards which fall into two categories. One type is only for company postings of work-related information and job opportunities and the other is a general purpose or miscellaneous type, which employees can use to post notices advertising social events, items for sale, union meetings, and the like. There are break areas throughout the plants where employees are allowed to distribute literature and which contain boxes in which such items may be placed.

During December 1993, Hosea Haralson and Robert Van Noller, who are employees in the computer furniture plant, were distributing and posting union literature in the panel plant early in the morning during their nonworking hours when they were ordered by a supervisor to stop doing so and to leave the premises. Thereafter, pursuant to the directions of the Respondent's Employee Relations Manager George Nelson, they were given what they considered to be verbal warnings over the incident. Subsequently, they each received a memorandum, dated January 10, 1994, from the Respondent's Director of Human Resources Dan Wiljanen, informing them that no formal or informal disciplinary action had been taken against them as a result of the incident and that the Respondent does not prohibit employees from entering any of its plants, during their nonworking hours, to post or distribute literature.

B. *The April 1994 Incident*

The complaint alleges that on April 19, 1994,[1] an agent of the Respondent unlawfully removed union literature from a general purpose bulletin board in the computer furniture plant. Hosea Haralson testified about an incident that occurred on a day in April 1994, the date of which he could not specifically recall. He was working at the setup desk in the computer furniture plant at about 4:30 p.m., when he observed Foreman Bill Cook near one of the miscellaneous bulletin boards located near the timeclock outside Cook's office in an adjacent department.[2] Cook had a yellow or green paper in his hand. After looking at the board, Cook removed a posting from the board and posted the paper he was carrying. Cook then also removed from the bulletin board a union newsletter, which Haralson had posted there about an hour earlier, and threw it into a wastebasket along with the other posting he had removed. Haralson later retrieved the two postings from the wastebasket and observed that the paper Cook had posted was an announcement of a spaghetti dinner which the Company was providing to employees as a reward for meeting a production goal. Haralson testified that there was empty space on the board after Cook posted his paper and before he removed the union posting. Remaining on the same board at the time were notices concerning a golf outing, a boat for sale, and a tax service. He also said that prior to this incident he was concerned about the fact that some of the union notices he had put up in the plant had been removed. He wanted to find out who was doing it and why, but he said nothing to Cook about this incident because he was a supervisor.

Cook testified that he had seen union literature on the miscellaneous bulletin board outside his office during the Union's organizing campaign and that to the best of his knowledge he had never removed any from that board. He has on occasion removed items from the board if they had been up there ''too long.'' He testified about an incident on April 19 in which he found two pieces of union literature on a company job posting bulletin board which he took down and threw away. He also testified that he had no recollection of posting a notice about a spaghetti dinner on any bulletin board.

Analysis and Conclusions

I found Haralson to be a credible witness notwithstanding his inability to remember the specific date this incident occurred. His testimony about the incident was plausible, specific and detailed, describing not only the union literature that was removed but the notice Cook posted, as well. There is no reason to believe he was mistaken about what occurred or which bulletin board was involved. I find the fact that he described the miscellaneous bulletin board in question as being ''right next to'' the timeclock, while photographs show there is a window between them, does not, as the Respondent contends, cast significant doubt on his credibility. In context, it is clear that he used the timeclock as a reference point because both it and the miscellaneous bulletin board are on the same outside wall of Cook's office, as distinguished from a job posting bulletin board in the vicinity which is across a corridor and some distance away. I find that his failure to mention the window has no bearing on the operative facts and in no way detracts from his credibility. What is much more significant is that he is a longtime employee who is still in the Respondent's employ. As such, it is unlikely that he would fabricate such an incident. *Rodeway Inn of Las Vegas*, 252 NLRB 344, 346 (1980); *Gold Standard Enterprises*, 234 NLRB 618, 619 (1978). This is particularly true here where Haralson credibly testified that he has always respected Cook and considers him ''a nice guy.'' After observ-

[1] Hereinafter, all dates are in 1994.

[2] Haralson testified that Cook is not his supervisor but he has known him throughout the 11 years he has worked for the Respondent.

ing Cook's demeanor while testifying, I cannot credit him over Haralson. Cook appeared to be uncomfortable throughout his testimony. His story about removing union literature from a job posting board on April 19 struck me as an attempt to divert the focus from his actions by suggesting that there was union literature that was improperly posted. Even if it happened as he says, it does not contradict Haralson's credible testimony as to what he observed Cook do at the miscellaneous board.[3] I find that the evidence establishes that Cook did remove the union newsletter from the miscellaneous bulletin board outside his office on a date in April 1994.

There is no dispute but that the Respondent provided miscellaneous or general use bulletin boards on which employees were permitted to post personal notices. Having done so, it cannot restrict or interfere with the posting of literature such as the union newsletter involved here. *New Process Co.*, 290 NLRB 704, 721 (1988); *G.H. Bass & Co.*, 258 NLRB 140, 142–143 (1981).[4] The Respondent violated Section 8(a)(1) of the Act by removing the union newsletter from the miscellaneous bulletin board. *Connecticut Color, Inc.*, 288 NLRB 699, 704 (1988); *Honeywell, Inc.*, 262 NLRB 1402 (1982).

C. *The May 17 Incident*

The complaint alleges that on May 17 the Respondent prohibited employees from distributing union literature in nonworking areas of the panel plant during nonworking time. The evidence establishes that on that date Robert Van Noller and Hosea Haralson entered the panel plant in the early afternoon, prior to their shifts, to post and distribute notices of a union meeting scheduled for May 19. While doing so, they were approached by two supervisors, Mike Benham and Richard Doorn. Doorn asked if they worked in the panel plant and when they said they did not, he said he would have to ask them to leave. When Haralson said that they had permission to put up the notices, he was told that it was ''not lunchtime'' and that they had to leave. He took out the January 10 memorandum from Wiljanen and asked them to read it. Doorn declined to read the memo and said that he did not need to read it to decide who could come into the building and that they had to leave. He said that they could go with him to George Nelson's office. Haralson and Van Noller declined to do so and decided to leave. They asked for the two supervisors' names which Van Noller wrote down. As they were leaving, Van Noller made a telephone call to report the incident to one of the union organizers, who suggested they find out the specific positions Benham and Doorn held. They walked back the way they came but when they did not see Benham and Doorn, they left the building. These findings are based on the credible testimony of Haralson and Van Noller and the consistent testimony of Doorn.[5]

Doorn testified that Benham came to him and said that two individuals had posted a union notice on a board outside his office. He also asked what the company policy was concerning persons who were not employees of the panel plant being in there. Doorn told him his understanding of the policy was ''if you don't work in the plant, you shouldn't be in the plant.'' He called the employee relations manager's office and talked with Nelson's secretary who told him she believed the policy was as he stated it. He approached Haralson and Van Noller and when they said they did not work in the panel plant, he asked them to leave.

Analysis and Conclusions

There is no evidence that the Respondent has a valid ''no-access rule,'' which meets the standards set by the Board in *Tri-County Medical Center*, 222 NLRB 1089 (1976). On the contrary, the memoranda issued to Haralson and Van Noller on January 10 make it clear that off-duty employees are allowed to enter any of its plants to post or distribute materials in nonwork areas. The action of Doorn in asking Haralson and Van Noller to leave the panel plant on May 17 interfered with their rights under Section 7 to communicate with other employees concerning union activity and violated Section 8(a)(1).

The Respondent contends that there was no unlawful interference because: (1) Doorn merely asked them to leave, he did not force them to do so and he invited them to go to Nelson's office to resolve the matter; (2) they had already distibuted their literature to 75 percent of the building and since they were not escorted out they could have completed their distribution; (3) their activity was not protected because they posted literature on a board reserved for company communications and they entered a working area and talked to employees who were working; (4) the supervisors' conduct was not prompted by antiunion motives; (5) they were promptly informed that they had a right to be in the plant to distribute the literature; and (6) employees have distributed massive quantities of union literature during the organizing campaign without interference. I find that none of these arguments can justify or excuse the interference with the employees' rights that occurred in this incident.

I find it makes no difference whether Doorn ''asked'' or ''ordered'' the employees to leave. He was a supervisor who, in effect, told them they were not allowed to be in the panel plant and could not remain there. The coercive effect of such a statement is obvious and they ignored it at their peril, particularly, when the supervisor would not even look at the document they proffered as evidence that they were entitled to be there. The invitation to go to Nelson's office in no way lessened the interference. They were there to distribute literature, not to debate, and since they understood Nelson was responsible for the the warnings they initially received as a result of a similar distribution in December 1993, there was little reason to involve him. The arguments, that they had already distributed their literature to 75 percent of the plant

[3] Contrary to the Respondent's argument, I do not consider the fact that this is the only incident in which Cook was charged with removing union literature during the campaign constitutes corroboration for his testimony that he did not do it. It is just as consistent with an inference that this was the only time he was observed doing it by a union supporter.

[4] There is no contention that the newsletter contained anything offensive or controversial. There is also no contention, nor any basis for one, that the newsletter which had only been on the board for an hour was there ''too long.''

[5] I find the minor differences in the testimony of Haralson and Van Noller, as to when the latter called the union representative that day, cast no doubt on their credibility and have no bearing on the portion of the incident alleged as a violation.

and could have distributed the rest once they were out of Doorn's sight, require little comment. The Respondent had no right to determine or to limit how wide their distribution should be and one of the reasons for the protections afforded by the Act is so that they don't have to sneak around to exercise their rights.

The Respondent has not established that this distribution was not protected by Section 7. I find Doorn's hearsay testimony that Benham told him they ''had posted stuff on his board'' is insufficient to establish that they did so or that the board was restricted to company communications.[6] It also fails to establish that they engaged in conduct so egregious as to forfeit the protection of the Act. It is noteworthy that Doorn said nothing about this alleged offense at the time he confronted them. Supervisor Wendy Kremers testified that, 10 minutes or more after the incident, she saw two people, who fit the description Doorn had given her of the ones he had asked to leave the building, still there and talking to people who ''should have been working.'' I find this testimony is irrelevant and another attempt by the Respondent to shift the focus of this inquiry away from its actions. What the employees may have or have not done after being intercepted by Doorn and ''asked'' to leave has no bearing on the issue under consideration—whether the Respondent unlawfully interfered with their right to distribute union literature in the panel plant. I have found that the evidence does not establish that they did anything prior to the point at which Doorn confronted them that was even arguably improper or would warrant his doing so. The evidence is that he did so only because he mistakenly believed they should not have been in the plant.

The Respondent contends that there is no evidence that Doorn was motivated by antiunion considerations when he confronted Haralson and Van Noller, but was acting on a good belief that they should not be in the plant. That is open to question given his testimony that he has not challenged everyone he has seen in the plant that he did not recognize, his refusal to even look at the Wiljanen memorandum the employees offered him, and the fact that, once he asked them to leave, he made no effort to see if they actually had done so.[7] I find this suggests he was more interested in hassling them than in enforcing a company policy. In any event, it doesn't matter, since the employer's motivation is not relevant in determining whether there has been a violation in a case such as this. *Honeywell, Inc.*, supra; *Arkansas-Best Freight System*, 257 NLRB 420, 422–423 (1981).

There is evidence that Haralson and Van Noller went back into the panel plant the following day and posted notices without interference after being told by a representative of the Union that they could do so. Supervisor Gary Baar testified that on May 18 or 19 he encountered two individuals distributing literature, one of which they had posted on his office where he posts company notices only. He removed it and gave it back to them and told them they could leave the literature in break areas but could not post it on his office. The Respondent contends that this effectively countered any interference they might have previously experienced. I do not agree. The evidence shows that they returned to the panel plant because a union representative told them they could. There is no evidence that any representative of the Respondent informed them or the employees in general that their being asked to leave the previous day was an error or would not happen again. Even assuming that it was Haralson and Van Noller who encountered Baar on May 18, the fact that he did not interfere with their lawful activities and acknowledged their right to distribute literature does not serve to ''effectively cure'' the interference to which they were subjected on the previous day. It shows only that Baar was apparently more aware of the employees' rights than Doorn was. Baar was not Doorn's superior and there was no evidence that the Respondent or Doorn has ever acknowledged that his actions on May 17 were improper or that the Respondent has ever undertaken to effectively inform its supervisors what its policies concerning distribution of literature and access to its plants actually are. On the contrary, the evidence shows that, between December 1993 and May 1994, it failed to take the action necessary to assure that all of its supervisors were aware of and respected the employees' rights to which the Wiljanen memorandum pays lip service. The fact that, in this instance, the interference with those rights was repeated in almost identical fashion by a different supervisor precludes a finding that it should be overlooked as ''de minimus.'' Finally, the fact that the evidence shows that in many instances the Respondent did not interfere with its employees' rights does not exonerate it from responsibility for the interference involved here.

D. *The May 19 Incident*

Panel plant employee David Livingston testified that, on May 19, at about 9 a.m., he observed Supervisor Gary Baar pick up some union newsletters that were on the tables of a break area. However, he did not observe what Baar did with those materials. Baar testified that at the time of this incident he was responsible for seeing that the break area in his work area was kept clean. During the organizing campaign, he observed union literature on the tables and in distribution boxes in the break area. He said that he never disturbed union literature that was stacked up or in the box, but that he has picked up and thrown away such materials as well as others that were on tables, chairs, or the floor and appeared to have been discarded. He also said that on occasion he has picked up union literature to read it and to pass it along to Nelson. The complaint alleges that Baar's actions on May 19 violated the Act.

Analysis and Conclusions

While I credit Livingston's testimony as to what he observed on May 19, I find it does not establish that Baar acted unlawfully. Livingston saw Baar pick up an unspecified number of the union newsletters that were on tables in the break area but did not see what he did with them. Baar's credible testimony was that he has picked up union literature that appeared to have been used and discarded while in the process of meeting his responsibility to keep the break area clean and also in order to read or provide a copy of such materials to the employee relations office. There is no evi-

[6] Benham, the alleged eyewitness, was not called to testify and his absence was not explained. I infer that his testimony would not have supported the Respondent's position. *International Automated Machines*, 285 NLRB 1122, 1123 (1987).

[7] If he was really concerned about unauthorized persons being in the plant, it is reasonable to assume that he would have taken some action to assure that they left or were removed.

dence that he has removed such literature from the distribution box in the break area or when it was stacked up on tables for distribution. The mere fact that he picked up such material does not establish a violation. By making such materials available to the entire plant population, it must be assumed that the Union expected and probably wanted them to be read by all employees including supervisors. I find it that Baar's taking a copy of such literature to read or to provide to another company official does not interfere with employee rights. In this instance, it appears that he was performing a housekeeping function by removing literature that had been removed from the distribution box or stacks on the tables and had been discarded after use. I find the evidence does not establish a violation of the Act. *Page Avjet, Inc.*, 278 NLRB 444, 450 (1986).

CONCLUSIONS OF LAW

1. The Respondent, Steelcase, Inc., is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(a)(1) of the Act by removing union literature from a general purpose bulletin board during April 1994 and by interfering with the distribution of union literature in its panel plant on May 17, 1994.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent did not engage in unfair labor practices not specifically found herein.

THE REMEDY

Having found that the Respondent violated Section 8(a)(1) of the Act, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[8]

ORDER

The Respondent, Steelcase, Inc., Kentwood, Michigan, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Removing union-related materials from bulletin boards which are otherwise available for general use by employees.

(b) Interfering with the distribution of union-related materials by off-duty employees in nonworking areas of its plants.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Post at its facilities in Kentwood, Michigan, copies of the attached notice marked ''Appendix.''[9] Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

IT IS FURTHER ORDERED that the consolidated complaint is dismissed insofar as it alleges violations of the Act not specifically found.

[8] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[9] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT remove union-related materials from bulletin boards which are otherwise available for the general use of employees.

WE WILL NOT interfere with the distribution of union-related materials in our plants by off-duty employees in nonworking areas.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

STEELCASE, INC.